

In the Matter of Merchant Mariner's Document No. Z-268907-D2 and All Other Seaman Documents

Issued to: PATRICK J. DONOVAN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1285

PATRICK J. DONOVAN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 16 March 1961, an Examiner of the United States Coast Guard at Seattle, Washington suspended Appellant's seaman documents for six months upon finding him guilty of misconduct. The two specifications found proved allege that while serving as deck engineer on board the United States SS WESTPORT under authority of the document above described, on 24, 25 and 26 January 1961, Appellant wrongfully failed to perform his regularly assigned duties by reason of being under the influence of alcohol and he wrongfully failed to obey the lawful orders of the Chief Engineer. The ship was at sea on these dates.

At the hearing, Appellant voluntarily elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence nothing except the entries on one page of the Official Logbook.

In defense, Appellant produced documents showing that he received overtime pay for three hours on 24 January and for two hours on 25 January. Appellant stated that the union agreement prohibited him from getting overtime pay for any day on which he did not perform his own duties on day work between 0800 and 1700. Later, Appellant mentioned that he "brought in a copy of that union contract that we have got so they could check them days off, you know, that ***." At this point, Appellant was interrupted by the Examiner and no further reference was made to the so-called union contract or union agreement. The Investigating Officer repeatedly stated that whether Appellant worked overtime had no bearing on the case. During the course of rambling discussions with the Examiner, Appellant stated that he had worked on these three dates, he could not have worked overtime if he had been drunk, and although he denied the false allegation in the logbook he did not sign the log for the same reason that he would not sign a bad check.

Appellant said that he is 41 years old and has been going to sea for 23 years. His prior record consists of a probationary

suspension in 1944 for pilfering ship's cargo; a two months' suspension in 1945 for absence without leave and failure to join; two months' suspension on twelve months' probation by decision dated 1 October 1960 for absence without leave, failure to join, and intoxication.

APPEARANCE ON APPEAL: John D. Spellman, Esquire, of Seattle, Washington, of Counsel

OPINION

The only evidence submitted by the Investigating Officer is the following excerpt from the logbook:

Lat. 1° 50 N Jan 2? (Second numeral appears to be a 7 or 4)

Lo. 101° 5 E Patrick J Donovan. Dk. Engr.

Z 286 907 (sic) Failed to Turn to and perform his routine Duties. Did not obey the Ch. Engr's Orders to do so. was under the influence of liquor.

Paul Christie - Ch. Mate

Charges preferred by A. Milek Chief Engr.

Paul Christie

Seaman reply. He denies the above Statement

Refuses to sign

Action Taken Logged 3 Days Pay

(Jan 24-25-26)

\$45.89

Master

Jan 28, 1961

Witness to Logging

Paul Christie - Ch. Mate

Seaman

M.M. STRAUSS
Master

In his decision, the Examiner concluded that both specifications were proved by these log entries without reference to Appellant's except to mention that Appellant said he could, and did, perform his own duties as well as some duties of others on the dates in question. Despite Appellant's denials of guilt at the time of the logging and at the hearing, the Examiner failed to make any finding as to Appellant's credibility. No consideration was given to Appellant's basic defenses that he could not have received overtime pay unless he did his own work on these dates and he could not have worded overtime if he had been drunk. There is no explanation as to why Appellant's apparent attempt to back up his defense by presenting a copy of the union agreement was cut off by the Examiner.

The Examiner stated that perhaps it was noteworthy that Appellant did not take the witness stand under oath. The fact is the record does not show that Appellant was ever informed of his right to testify under oath or given an opportunity to do so. The Examiner simply told Appellant to "proceed" with his defense and Appellant started talking.

The logbook entry does not definitely support the allegation that intoxication was the reason for the alleged failure to perform duties. But if a seaman is incapacitated by liquor, it is improper to also conclude that it would be proper to order a seaman to work while in such a condition.

Because of these deficiencies, the findings and conclusions that the specifications were proved are reversed; the charge and specification are dismissed.

It was not correct to make effective the suspension in the decision of 1 October 1960 without disposing of and disproving Appellant's denial that he received this decision prior to the dates of the alleged offenses considered herein. See Appeal No. 719.

ORDER

The order of the Examiner dated at Seattle, Washington, on 16 March 1961, is VACATED.

A. C. Richmond
Admiral, United States Coast Guard
Commandant

Signed at Washington, D.C., this 12th day of February 1962.